



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

February 15, 1996

Mr. John T. Richards
Assistant General Counsel
Texas Department of Health
1100 West 49th Street
Austin, Texas 78756-3199

OR96-0201

Dear Mr. Richards:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 38232.

The Texas Department of Health (the "department") received a request for certain "medical costs of the managed-care organization currently operating in Travis County Medicaid Pilot Project." You claim that this information is excepted from disclosure by section 552.104 of the Government Code. You have submitted information for our review.¹

Section 552.104 excepts from disclosure "information that, if released, would give advantage to a competitor or bidder." The purpose of this exception is to protect the interests of a governmental body in competitive bidding situations. Open Records Decision No. 592 (1991) at 8. Section 552.104 is not designed to protect the interests of private parties that submit information to a governmental body.² *Id.* at 9. This exception protects information if the governmental body demonstrates the possibility of specific harm to its interests in a particular bidding or competitive situation. Open Records

¹You have submitted a summary of medical costs for the year ending August 31, 1994. The requestor seeks information about the costs of the managed-care organization *currently operating* in the pilot project. You imply that PCA Health Plans of Texas, Inc. ("PCA") holds the current project contract. Therefore, a summary of PCA's medical costs for the year ending August 31, 1995, and any partial summaries for the current fiscal year are also responsive to this request.

²We note your contention that "the information being requested is also information that is very sensitive to PCA Health Plans of Texas, Inc., the organization from which the financial data originates." Section 552.104 does not protect PCA's interest in the information.

Decision Nos. 593 (1991) at 2, 541 (1990) at 4. Furthermore, section 552.104 is generally inapplicable when the bidding is complete and the governmental body has awarded the contract. Open Records Decision Nos. 541 (1990) at 5, 514 (1988) at 2. See Gov't Code § 552.022. In Open Records Decision No. 541 (1990) we noted that section 3(a)(4) [now Gov't Code § 552.104] may protect information submitted by a successful bidder if disclosure would allow competitors to accurately estimate and thereby undercut future bids. However, this principle applies only when the governmental body solicits bids for the same or similar goods or services on a recurring basis. Open Records Decision No. 541 (1990) at 5.

The information that you claim is protected by section 552.104 was not submitted by an applicant health-care provider as part of a bidding process. The successful bidder who currently holds the pilot project contract submitted the information to the department. You have not shown that the department enters into contracts for the same or similar services on a recurring basis. As you have not shown that section 552.104 applies to the requested information, you must release the information.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,


Karen E. Hattaway
Assistant Attorney General
Open Records Division

KEH/ch

Ref.: ID# 38232

Enclosures: Submitted documents

cc: Mr. Steve Montgomery
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(w/o enclosures)